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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/721,895 | 11/26/2003 | Alfred Niederberger | 10139/04702 | 6293 |
| 30636 7590 03/09/2009 FAY KAPLUN & MARCIN, LLP 150 BROADWAY, SUITE 702 NEW YORK, NY 10038 | | | | |
| EXAMINER | | | | |
| ARAJ, MICHAEL J | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 3775 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
| 03/09/2009 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/721,895

Applicant(s)

NIEDERBERGER ET AL.

Examiner

MICHAEL J. ARAJ

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9-21, 23-42, 44-47 and 51-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25-39 and 44-46 is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-21, 23, 24, 40-42, 47 and 51-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 7, 9-21, 24, 40-42, 47 and 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Esser (U.S. Patent No. 6,096,040) in view of Kondo (U.S. Patent No. 3,779,240).

Esser discloses a bone plate (30) comprising an elongated shaft portion (32) having a first width, a head portion (34) connected to the shaft portion having a greater width along a common longitudinal axis, at least one partially threaded screw hole (22) located in the head and shaft portion where in at least one of said screw holes are configured to engage a head of a bone screw to form an angularly stable connection with the bone screw. The first and second screw holes include at least a partial peripheral groove (64A) for engaging a head of a bone screw that is substantially wedged shaped. Esser also discloses a third width that widens exponentially, the shaft portion being curved in the form of an elliptical arc along the longitudinal axis, and the shaft portion lying in a first plane that is substantially parallel to the head portion lying in a second plane (see Figure 4). At least one portion of the bone plate has a curvature that runs transversely to the longitudinal axis, where the curvature substantially runs over the entire length of the bone plate (Figure 5). The head portion is connected to the

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shaft portion at a transition portion where one first pair of the first holes is located farther from the transition portion than the second pair of the first holes, and where at least one of the second holes defines a central axis that is substantially perpendicular to the longitudinal axis. Also disclosed are the plurality of second screw holes are symmetrically arranged about the common longitudinal axis and the plurality of first screw holes are asymmetrically arranged about the common longitudinal axis. (See Fig. 1 below) At least one of an upper surface and a lower surface of the bone plate is divided substantially in half by the common longitudinal axis, and at least a first pair of first holes is symmetrically disposed about the longitudinal axis and at least a second pair of first holes is asymmetrically disposed about the longitudinal axis (Fig. 1 below).

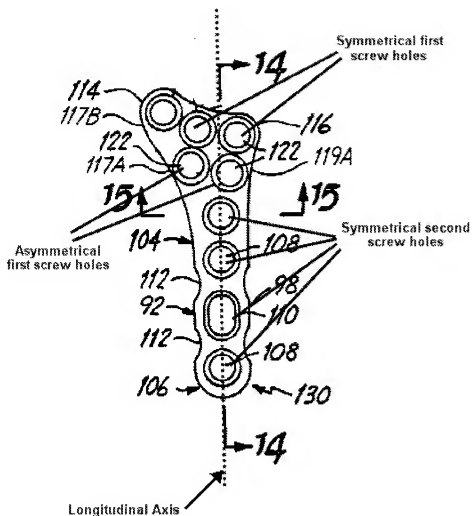


Figure 1

Esser disclose the claimed invention except for the elongated perimeter of at least one screw hole being formed by first and second overlapping shapes of different size (See Figure 2 below) and the range of the thread pitch, plate thickness, elliptical arc with a major and minor axis, curvature of radius, acute angles and obtuse angles. Kondo discloses an elongated perimeter of at least one screw hole formed by a first and second overlapping shape of different size so that when the screw is tightened the hole

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causes progression of the plate along tibia axis to encourage and retain the fracture surfaces in firm abutment (Col 2, Paragraph 1). It would have been obvious to one skilled in the art at the time the invention was made to have constructed the device of Wack et al. with an elongated perimeter being made of two different sized holes in view of Kondo., in order to have a firmer support for the fractured bone. With respect to the ranges, it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the bone plate of Wack et al. having the ranges as set forth in the disclosed claim, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

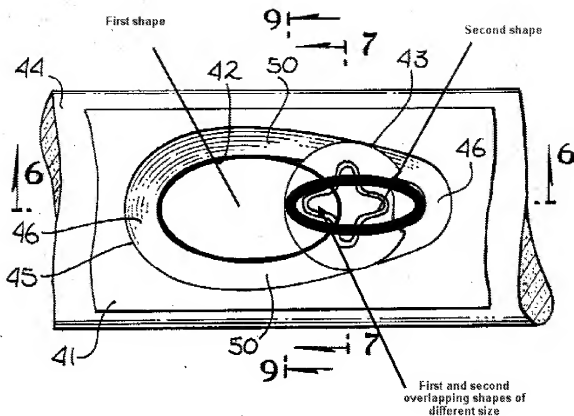


Figure 2

Claims 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Esser (U.S. Patent No. 6,096,040) in view of Kondo (U.S. Patent No. 3,779,240) further in view of Schafer et al. (U.S. Patent No. 6,572,622).

The combination of Esser and Kondo disclose the claimed invention, as applied to claim 1, except for the plate having screw holes that are double threaded. Schafer et al. teaches a serrated or threaded edge (32) on two portions of the aperture (the flat flank (34) and the steep flank (36)) producing a double threaded screw hole. It would have been obvious to one skilled in the art at the time the invention was made to

construct the plate of Esser with a double threaded screw hole in view of Schafer et al., for facilitating screwing in the bone screw and prevent automatic unscrewing (Col. 3, lines 6-11).

Response to Arguments

Applicant's arguments filed December 17, 2008 have been fully considered but they are not persuasive. Applicant argues that the teachings of Kondo do not have an elongated perimeter formed by first and second overlapping shapes of different size. Applicant is directed to Figure 2 shown above.

Applicant also argues that the head portion is not divided substantially in half by a common longitudinal axis as recited in claim 1 because of the shape of the head of Esser. The term "substantially" is a relative term that does not give a clearly defined structure. Esser is considered have the head being substantially divided in half by the common longitudinal axis of the shaft as seen in Figure 1 above.

Allowable Subject Matter

Claims 25-39 and 44-46 are allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. ARAJ whose telephone number is (571)272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Michael J Araj/

Examiner, Art Unit 3775

/Eduardo C. Robert/

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Supervisory Patent Examiner, Art Unit 3733